

REMARKS

Claims 1-30 are currently pending in this application, of the above claims 12-15 and 18-30 are withdrawn from consideration. By this Amendment, claims 1 and 3 have been amended. No new matter has been added via this amendment, support for the amendment can be found at least at paragraph 0032, lines 1-4.

Claim Objections

The Examiner has objected to claim 3 because “The” was missing from the beginning of the claim. Claim 3 has been amended to correct this inadvertent error. Applicant requests that this objection be withdrawn.

§ 102 Rejection of the Claims

Claims 1-4, 6-11 and 16-17 have been rejected under 35 U.S.C. § 102 as being anticipated by Edwards, U.S. Patent No. 6,254,598. Applicant respectfully traverses this rejection.

Applicant has amended claim 1 to specify that the tissue to be ablated is “fundal tissue”. Edwards does not teach ablation of the fundal tissue. The objects of Edwards’ invention includes providing an apparatus to treat a sphincter, providing an apparatus to create controlled cell necrosis in a sphincter, providing an apparatus to create cell necrosis in a sphincter and minimize injury to a mucosal layer of the sphincter, providing an apparatus to controllably produce a lesion in a sphincter, providing an apparatus to create a tightening of a sphincter, providing an apparatus to create cell necrosis in a lower esophageal sphincter, and providing an apparatus to reduce the frequency and severity of gastroesophageal reflux events, column 3, lines 23-46. The specification of Edwards also includes numerous other mentions of affecting the lower esophageal sphincter.

The Examiner points to column 5, lines 30-33 as indicating that Edwards ablates the stomach. That particular passage states that the basket is positioned in the lower esophageal sphincter and/or stomach including the cardia. The cardia of the stomach refers to the esophageal opening of the stomach (Stedmans Medical Dictionary, page 280). Therefore, this passage is again referring to the lower esophageal sphincter. Even if this passage could be

considered to be referring to the stomach broadly, it certainly does not specify any particular types of stomach tissue, and even more certainly does not specify fundal tissue. Because Edwards does not disclose ablation of fundal tissue, it does not anticipate claim 1, and therefore it also does not anticipate those claims dependent thereon, claims 2-4, 6-11, and 16-17. Accordingly, withdrawal of this rejection is respectfully requested.

§ 103 Rejection of the Claims

Claim 5 has been rejected under 35 U.S.C. § 103 as being unpatentable over Edwards, U.S. Patent No. 6,254,598. Applicant respectfully traverses this rejection.

Applicant reiterates the comments offered above, and notes that one of skill in the art would not have been motivated to modify Edwards to ablate a portion of the stomach that is not the lower esophageal sphincter, because such ablation would not fulfill the purpose of Edwards. Edwards discusses the result of ablation of the lower esophageal tissue and specifically states that the cells (fibroblasts, myofibroblasts, macrophages, and other cells involved in the tissue healing process) that infiltrate the ablated area cause a contraction of tissue around the lesion, decreasing its volume and/or altering the biochemical properties at the lesion **so as to result in a tightening of lower esophageal sphincter or sphincter** (column 12, lines 23-28). Ablation of tissue other than that in the lower esophageal sphincter would not result in the tightening of the sphincter and would therefore no longer be capable of treating gastroesophageal reflux disorder, which is part of the purpose of Edwards. Because there is no motivation to modify the teachings of Edwards, and indeed such a modification would render Edwards unusable for its intended purpose, claim 5, is not obvious in view of Edwards. Withdrawal of this rejection is respectfully requested.

In view of the foregoing amendments, Applicants respectfully request reconsideration and allowance of the claims as all rejections have been overcome. Early notice of allowability is kindly requested.

The Examiner is respectfully requested to contact the undersigned by telephone at 763.505. 0409 or by E-mail at anna.m.nelson@medtronic.com with any questions or comments.

Please grant any extension of time, if necessary for entry of this paper, and charge any fee due for such extension or any other fee required in connection with this paper to Deposit Account No. 13-2546.

Respectfully submitted,

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